

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writ of *Certiorari*.

Court of Appeal Case No:
CA/WRIT/136/2021

Mahaweli Authority of Sri Lanka,
No. 500,
T.B. Jayah Mawatha,
Colombo 10.

PETITIONER

Vs.

1. Minister of Labour and Foreign
Employment,
Labour Secretariat,
No. 41, Narahenpita,
Colombo 05.
2. Commissioner General of Labour,
Labour Secretariat,
No. 41, Narahenpita,
Colombo 05.
3. Deputy Commissioner of Labour
(Industrial Relations),
Industrial Relations Division,
Labour Secretariat,
No. 41, Narahenpita,
Colombo 05.
4. W.G. Dean,
The Arbitrator,
No. 12, Inner Vanderwert Place,
Dehiwala, Mt. Lavinia.

5. S. Virithamulla,
The Arbitrator,
No. 128, Pirivena Road,
Boralesgamuwa.
6. Sisira De Silva,
“Sisilasa”,
Opposite Railway Station,
Kahawa.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: K. Asoke Fernando with A.R.R. Siriwardane for the Petitioner
instructed by Asha R. Hettiarachchi.
Sachitha Fernando, S.C. for the 1st to 3rd Respondents.

Argued on: 25.05.2026.

Written Submissions: For the Petitioner on 30.01.2026.
For the 1st to 3rd Respondents on 10.08.2026.

Decided on: 25.09.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

- “c) grant a Writ of Certiorari quashing the arbitral award dated 03.12.2019 marked P20
- d) grant a Writ of Certiorari, quashing the publication of the arbitral award vide the Gazette Extraordinary no. 2159/45 dated 24.01.2020 marked as P22”

The facts of this case, in brief, are as follows. The 6th Respondent was employed as a cashier at the Petitioner Authority and continued in such employment until he reached the optional age of retirement. Upon reaching the optional age of retirement, the 6th Respondent, by letter dated 04.01.2008, requested an extension of his service. The Petitioner granted an extension of one year, from 17.10.2007 to 17.10.2008. Upon the expiry of this extension, the 6th Respondent made similar requests by letters dated 28.07.2008 and 20.06.2009, pursuant to which the Petitioner extended his service until 17.10.2009 and 17.10.2010, respectively. Subsequently, the 6th Respondent, for the fourth time, requested a further extension of his service, which the Petitioner granted until 17.10.2011 by letter marked P2D.

However, following the transfer of another cashier from Colombo, who performed the same duties as those carried out by the 6th Respondent, the Board of Directors of the Petitioner Authority decided to annul the decision contained in P2D and, instead, fixed the 6th Respondent's date of retirement as 28.02.2011. Notwithstanding this decision, the Petitioner subsequently extended the 6th Respondent's service until 28.05.2011.

Thereafter, the 6th Respondent made a complaint to the 2nd Respondent, the Commissioner General of Labour, in this regard. Following an inquiry, the 3rd Respondent, the Deputy Commissioner of Labour, recommended that the 6th Respondent's date of retirement be extended until 17.10.2011, as set out in the document marked P7 dated 06.07.2011. Subsequently, the 6th Respondent filed an application before the Labour Tribunal seeking compensation for the termination of his services. While the matter was pending before the Labour Tribunal, the 6th Respondent requested a further extension of his service until 28.05.2012.

The Petitioner accordingly informed the 2nd and 3rd Respondents that the Petitioner Authority would take appropriate steps after the Labour Tribunal delivered its order. Nevertheless, as the Petitioner had failed to comply with the recommendation contained in P7, the 3rd Respondent referred the dispute for arbitration under section 4(1) of the Industrial Disputes Act. Accordingly, the Minister of Labour and Labour Relations referred the dispute for arbitration. The arbitrator decided in favour of the 6th Respondent, as evidenced by the decision marked P20 and P21. Being aggrieved by the aforesaid decisions, the Petitioner Authority has preferred the present Writ Application before this Court.

The Petitioner's contention

The Petitioner challenges the acts of the Respondent on the following grounds:

- The arbitrator lacked jurisdiction to make the arbitral award as the referral to arbitration is bad in law.
- The arbitrator has acted contrary to section 17(1) of the Industrial Disputes Act.
- The Respondents have acted arbitrarily, capriciously, irrationally and contrary to the principles of natural justice.

The Respondents' contention

The 1st to 3rd Respondents raised the following objections:

- The Petitioner is guilty of laches.
- The Petitioner's application is futile.
- The Respondents have acted in accordance with the law.

Analysis

It is common ground that;

- The 6th Respondent was an employee of the Petitioner.
- The 6th Respondent had reached his optional retirement age.
- He had been given extensions of services on three occasions until he reached the age of 58.
- He had been given a further extension and was retired on 28.02.2011.
- The 6th Respondent had complained to the Commissioner General of Labour and the Labour Tribunal.
- Both had commenced inquiries.
- The Commissioner General of Labour has requested to allow the 6th Respondent in service until he reached the age of 60.
- As there was no settlement, the Commissioner General of Labour had referred the matter for Arbitration pursuant to section 4 of the Industrial Disputes Act.
- By that time the Labour Tribunal too had commenced its inquiry into unlawful termination.

At the argument stage, the Petitioner's main contention was that, subsequent to the 6th Respondent's services coming to an end upon reaching the age of retirement, the 6th Respondent had made an application to the Labour Tribunal and also to the Labour Commissioner. Subsequent to an inquiry, the Labour Commissioner had come to the conclusion that the 6th Respondent should be reinstated and allowed to work until he reached the age of 60. However, the Labour Tribunal too had commenced the inquiry into the alleged termination. It was not disputed that the Labour Tribunal inquiry had commenced prior to the Commissioner General of Labour referring the industrial dispute to arbitration pursuant to section 4 of the Industrial Disputes Act. Hence, the Petitioner contends that, when a matter is before the Labour Tribunal, the Minister cannot take steps to refer the matter for arbitration thus, making the referral bad in law.

The Petitioner also contended that, when the matter was referred for arbitration, there was no live dispute between the parties and by that time, the Petitioner had retired and also obtained his statutory terminal benefits.

Let me now consider the first ground urged by the Petitioner that, the arbitral referral is bad in law.

Is the arbitral referral bad in law?

In deciding this ground, let me consider the sequence of events that occurred.

- The 6th Respondent made an application to Commissioner General of Labour by letter dated 16.05.2011 (P6).
- The Deputy Commissioner General recommended that the date of retirement of the 6th Respondent be extended until 17.10.2011 by letter dated 06.07.2011 (P7).
- The 6th Respondent filed an application in the Labour Tribunal (date is not mentioned).
- The 6th Respondent requested a further extension of services until 28.05.2012 by an undated letter marked P8.
- The Deputy Commissioner General communicated his decision to the Petitioner by letter dated 21.11.2011 (P10A and P10B).
- The Deputy Commissioner General, by letter dated 23.01.2012 (P11) informed the Petitioner that the continued failure to comply with the recommendations would result in the dispute being referred for arbitration.
- The Minister of Labour and Labour Relations referred the dispute for arbitration and appointed Mr. W.G. Dean as the arbitrator by reference dated 22.02.2013 (P13B).

- Mr. S. Virithamulla was appointed as the arbitrator following the revocation of the appointment of Mr. W.G. Dean by letter dated 05.03.2013 (P14, P15B, P15C).
- Arbitral award dated 03.12.2019 (P20) was decided in favour of the 6th Respondent.

It is not disputed that the 6th Respondent had made an application to the Labour Tribunal upon his retirement on the basis of unjust termination. It is clearly borne out by the documents tendered that, the application to the Labour Tribunal and the complaint to the Commissioner General of Labour had been made by the 6th Respondent. However, the Counsel did not address the issue of when the application was preferred to the Labour Tribunal.

It is also pertinent to ascertain whether the reliefs sought before the Labour Tribunal and the nature of the reference made to the arbitrator is the same. The order of the Labour Tribunal is at page 155 of the brief. In the said order, the learned President of the Labour Tribunal had reproduced the issues that had been raised.

“ඒ අනුව මෙම නඩුවේ විසඳිය යුතු ප්‍රශ්න පහත පරිදි වන බව තීරණය කරමි.

- 1. වගඋත්තරකරු විසින් ඉල්ලුම්කරුව අවුරුදු 59 දී විශ්‍රාම ගැන්වීම හා ඉල්ලුම්කරුට අවුරුදු 60 දක්වා සේවා දිගුව ලබා දීම ප්‍රතික්ෂේප කිරීම තුළ ඉල්ලුම්කරුගේ සේවය අවසන් කර ඇද්ද?*
- 2. වගඋත්තරකරු විසින් ඉල්ලුම්කරුව වයස අවුරුදු 59 දී විශ්‍රාම ගැන්වීම රාජ්‍ය ව්‍යාපාර වක්‍ර ලේඛ යටතේ සිදු කිරීමේ අභිමතය වග උත්තරකරු සතු වන්නේ ද?*
- 3. ඉහත 02 වන විසඳිය යුතු ප්‍රශ්නයට එසේ යැයි පිළිතුරු ලැබේ නම්, වගඋත්තරකරුගේ ක්‍රියාව අභියෝගයට ලක් කිරීමේ අධිකරණ බලය විනිශ්චය අධිකාරය සතු වන්නේද?*
- 4. එසේ නම් වගඋත්තරකරු ඉල්ලුම්කරුව අවුරුදු 59 න් විශ්‍රාම ගැන්වීම සාධාරණ හා යුක්ති සහගත වන්නේද?*
- 5. ඉහත විසඳිය යුතු ප්‍රශ්නයට නැත යැයි පිළිතුරු ලැබේ නම්, ඉල්ලුම්කරු මෙම විනිශ්චය අධිකාරයෙන් සහන ලැබීමට සුදුසුකම් ලබයිද?*
- 6. එසේ නම් කිනම් සහන මෙම විනිශ්චය අධිකාරයෙන් ඉල්ලුම්කරුට ලබා දිය යුතුද? ”*

Let me now consider the referral to the arbitration found in document P15A which reads as follows;

“ලංකාවේ ව්‍යවස්ථාපිත අණපනක්වල 131 වැනි අධිකාරය වන කාමරීක ආරාධුල් පනත

(1956 ප්‍රතිශෝධිත මුද්‍රණය)

එක් පාශර්වයක් වශයෙන්,

සිසිර ද සිල්වා මයා, "සිසිලස" දුම්රිය ස්ථානය ඉදිරිපිට, කහව

සහ

අනෙක් පාශර්වය වශයෙන්,

ශ්‍රී ලංකා මහවැලි අධිකාරිය, අංක 500, ටී. ඩී. ජයා මාවත, කොළඹ 10,

ඉහත සඳහන් පාශර්වයන් අතර ඇති කාමරීක ආරාධුලට හේතු වී පවත්නා කරුණ වනුයේ,-

ශ්‍රී ලංකා මහවැලි අධිකාරියේ ප්‍රධාන කායරාලයේ මුදල් අයකැමියෙකු වශයෙන් සේවයේ යෙදෙමින් සිටි සිසිර ද සිල්වා මහතා හට අවුරුදු හැට (60) දක්වා සේවය කිරීමට අධ්‍යක්ෂ මණ්ඩලයේ අනුමැතිය ලැබී තිබියදීත්, ආයතනය විසින් ඔහුට අවුරුදු පනස් අටයි මාස තුනයි දින එකකොළහකදී විශ්‍රාම ගැන්වීම යුක්ති සහගත ද යන්න හා එසේ නොවන්නේ නම් ඔහුට ලැබිය යුතු සහනයන් මොනවාද යන්න පිළිබඳව වේ.

එම්. ඩී. සී. අමරතුංග,

කම්කරු කොමසාරිස්.

2015 දෙසැම්බර් මස 18 වැනි දින,

කොළඹ, කම්කරු කොමසාරිස් තැනගේ

කායරාලයේ දී දින යොදන ලදී.”

Both Counsel were not at variance that the question before the two bodies were pertaining to the same issue. Thus, it is clear that the question to be adjudicated before the two forums is the same, though the Labour Tribunal had a wider scope in view of the issues that had been raised.

Thus. it was contended that while an inquiry was pending before the Labour Tribunal, the Minister had no jurisdiction to refer it to an arbitrator pursuant to section 4 of the Industrial Disputes Act. The question as to whether the Labour Tribunal application preceded the referral to arbitration could have been easily answered if the parties tendered to this Court the copy of the application that had been tendered to the Labour Tribunal. Unfortunately, neither party sought to do so, and no submissions were made as to the date on which the application had been made before the Labour Tribunal.

In the absences of such, let me consider when the referral for arbitration had been made. I observe the gazette marked P15B refers to the original reference for arbitration with one Mr. Dean appointed as the arbitrator. The said appointment and the referral had been published in gazette no. 1801/4 dated 11.03.2013.

This is corroborated by the documents marked as P13A, the Commissioner General of Labour's reference dated 10.01.2013 (page 27) and the order of the Minister marked as P13B (page 29) where the arbitrator, Mr. Dean, had been appointed.

I have also considered the letter marked P11 (page 24), addressed to the Director General of the Mahaweli Authority of Sri Lanka, where the Commissioner General of Labour had informed his decision pertaining to the retirement of the 6th Respondent and had informed that, in the event of failure to implement the commissioners recommendation to allow the 6th Respondent to work till he reach the age of 60 years, the dispute will be referred for arbitration under section 4(1) of the Industrial Disputes Act. This letter is dated 23.01.2012. The letter had been replied to by the Petitioner, by its letter dated 08.02.2012 marked as P12 (page 26) which reads as follows;

“සිසිර ද සිල්වා මහතාගේ සේවා දීප්තියේ කිසිදු ඉල්ලීම සම්බන්ධව අධ්‍යක්ෂ මණ්ඩලයට නැවතත් අධ්‍යක්ෂ මණ්ඩල පත්‍රිකාවක් ඉදිරිපත් කළේ. එය අනුමත වී නොමැති බව කාරුණිකව දන්වමි.

තවද සිසිර ද සිල්වා මහතාගේ සේවයෙන් විශ්‍රාම ගැන්වීමට විරුද්ධව ඔහු විසින් කොළඹ :02. වොක්ෂෝල් විදිය. කම්කරු විනිශ්චය සභාවට (නඩු අංක 8/574/2011) අයදුම්පතක් ඉදිරිපත් කර ඇති බව වැඩිදුරටත් කාරුණිකව දන්වමි.”

By this letter, the Petitioner has brought to the attention of the Commissioner General of Labour that the 6th Respondent had already made an application to the Labour Tribunal and it is pending. This letter was not challenged by the Respondents. Hence, it is my view that, this material is sufficient to establish that the Commissioner General of Labour was aware of the fact that there was a Labour Tribunal application filed before the dispute was referred for arbitration pursuant to section 4(1) of the Act. In the circumstances, the pivotal question to be answered is whether the Commissioner General of Labour can refer a dispute for arbitration when the said dispute is before the Labour Tribunal.

The learned Counsel for the Petitioner strenuously argued that this referral is bad in law as, by referring a dispute that is before a Labour Tribunal to an arbitrator, amounts to usurping the judicial powers of the Labour Tribunal and is an interference to the judicial process. The learned Counsel for the Respondent did not answer this question.

In considering the above contention I observe that it is not in dispute that the Labour Tribunal Presidents are also appointed as Magistrates for the purpose of enforcement of its orders. It is also pertinent to note that the President of a Labour Tribunal is appointed by the Judicial Services Commission. As per Article 111(m), of the constitution and they fall within the definition of a “judicial officer”. Hence, in the view of this Court, any dispute which a Labour Tribunal is posed with, if referred to arbitration, may violate Article 111(c) of the Constitution. In coming to this conclusion, I take the guidance from the case of ***Eksath Kamkaru Samithya v. Upali Newspapers Ltd 2001 (1) SLR 105*** where the Court held that;

“...in view of Article 116(1) of the Constitution, the minister had no power to refer the dispute regarding the termination of services for compulsory arbitration when applications in respect of the said dispute were pending in the Labour Tribunal. Such reference would infringe and violate the principle of the independence of the judiciary, enshrined in Article 116 of the Constitution.”

As per the sequence I have stated above, it is clear that, before the Commissioner referred the dispute for arbitration and the Minister appointed an arbitrator, the matter had been possessed by the Labour Tribunal and this issue had been brought to the attention of the Commissioner General of Labour by the letter P12.

Furthermore, in the case of ***Joseph Kumar De Silva v. Etihad Airways PJSC and others SC Appeal 65/2021, SC Minutes 09.11.2023***, the appellant had filed an application before the Labour Tribunal challenging the termination of his employment, after which the Minister referred the same dispute to compulsory arbitration. The Supreme Court held as follows:

“Section 31B(3)(a) cannot be invoked to suspend the proceedings before the Labour Tribunal when the same dispute between the same parties is before the arbitrator and the Labour Tribunal. If the Minister’s reference for arbitration precedes the application filed in the Labour Tribunal, in terms of section 31B(2)(b), the application before the Labour Tribunal shall be dismissed; if the Minister’s reference for arbitration follows the application filed in the Labour Tribunal, the Labour Tribunal can proceed with the application.

....

The Labour Tribunal is directed to hear the application of the appellant in its entirety. The proceedings before the arbitrator shall stand terminated.”

Hence, in my view, the Petitioner’s main ground on impeaching the referral for arbitration succeeds.

I also observe that the Labour Tribunal, subsequent to the conclusion of the inquiry, had given its order dated 08.01.2024 which is reflected in page 155 of the brief. In the said application, the learned President of the Labour Tribunal, after considering all the facts, had given an award in favour of the 6th Respondent answering most of the issues that I have reproduced above in this order in favour of the 6th Respondent and had awarded compensation. Even in the impugned order by the arbitrator in P20, the arbitrator too had made his award in favour of the 6th Respondent. Thus, in a summary the arbitrator has held that based on the facts that by not allowing the 6th Respondent to serve until he reaches the age of 60, an injustice had been caused to him. Hence, the contention by the Counsel for the Petitioner is that, the Petitioner has been penalised twice on the same issue.

Let me consider the second ground the Petitioner argued.

When an arbitrator is nominated, can the Minister revoke the said appointment before an award is made?

It is not disputed that, in the instant case, upon the Commissioner General's request, the Minister had appointed an arbitrator, namely, one Mr. W.J. Dean to arbitrate the industrial dispute under section 4(1) of the Industrial Disputes Act (P13B). It is not disputed that the parties had led their evidence before the arbitrator. Thereafter, the parties had made their pleadings before the arbitrator, led the evidence before the arbitrator and concluded the inquiry before the arbitrator, Mr. Dean. However, it is contended by the Petitioner that, even subsequent to parties filing the concluding written submissions, the Minister had revoked the appointment of the arbitrator and appointed a new arbitrator.

It is the contention of the Petitioner the said revocation and new appointment is bad in law as once an arbitrator is appointed, the Minister ceases to hold any power to revoke the appointment before he makes his award. Hence, it is argued that the revocation and second appointment was bad in law thereby making the impugned award by the second arbitrator bad in law.

The learned Counsel for the Petitioner heavily relied on the case of *Nadarajah Limited and Others v. Krishandasan and others* 78 NLR 255 and also *Equipment and Co. Ltd v. Ranasinghe* 1985 (1) SLR 82. In both these cases our Courts held that once an arbitrator is nominated, it is not competent for the Minister to revoke the reference and has no jurisdiction to make a second reference. However, the said judicial

pronouncements were subject to exceptions which the Petitioner himself conceded. This exception was specifically enumerated in the ***Equipment and Co. Ltd*** case. As reflected in page 8, the Court held that, if an arbitrator declines, resigns, dies or is incapable of performing his acts, then the above-mentioned restriction will not apply. The Court in elaborating the said exception stated as follows:

“Situations may however arise necessitating a second reference if the Arbitrator declines, resigns, dies or becomes incapable of performing his functions, or leaves Sri Lanka under circumstances showing that he will probably not return at an early date. Strictly speaking, in such an event there is no occasion to withdraw or supersede any reference from the first Arbitrator; the first Arbitrator has ceased to function and there is a frustration of the reference and so there is in existence no Arbitrator who could act on such reference.”

In the instant case before us, this Court’s attention is drawn to page 33 of the brief which is a letter written by the first arbitrator Mr. Dean dated 14.08.2015 addressed to the Secretary of the Labour Tribunal where the arbitrator has made a request to reallocate all the cases where he is an arbitrator to another arbitrator in view of his ill health. This letter had been forwarded to the Labour Commissioner by letter dated 06.08.2015 (pages 34 and 35). It appears that the arbitrator had not only sought to allocate the arbitration involved in the instant case before this Court but had requested to re-allocate four arbitration matters that he was handling. In view of the said request, the Minister had published gazette no. 1952/37 dated 03.02.2016 marked as P15 thereby the appointment made to Mr. Dean had been cancelled by P15B (page 39) and a new arbitrator appointed by the name of Mr. S Virithamulla P15C (page 40) and the referral made marked P15A (page 40).

Hence, the revocation of the appointment of the first arbitrator and the appointment of a new arbitrator had not been done by the Minister under circumstances considered in ***Nadaraja’s*** case but in my view, it had been done in the circumstances that fall as an exception and more fully described in ***Equipment and Co. Ltd*** case. It is also pertinent to note that even in ***Nadaraja’s*** case the said exception had been considered though it had been clearly explained in ***Equipment and Co Ltd*** case. Hence, in the view of this Court, when an arbitrator falls ill as that happened in this case, if the Minister does not have the power to cancel the first arbitration and appoint a second arbitrator, the entire arbitration process which had commenced would collapse. Since I have already decided that the referral for arbitration is bad in law, the need to consider this objection will not arise.

It is also pertinent to note that all evidence had been taken and written submissions had been filed before the first arbitrator. Hence when the second arbitrator commenced his arbitration whether the new arbitrator had inquired from the parties if they needed an inquiry *de novo* or whether they wished to adopt the preceding and allow the new arbitrator to pronounce order, is not reflected in the arbitration proceedings tendered to this Court. However, in the award made by the second arbitrator, he specifically mentioned that he had fixed the arbitration for 30.05.2016 and on that day, both parties had been present and both parties had agreed to adopt the proceedings. Therefore, the arbitrator had preceded to give his award based on the material that was before him.

Let me now consider the objections raised by the Respondents. The main ground argued by the Respondent was that the Petitioner was guilty of laches. It is the Respondents' contention that the award is dated 03.12.2019 (P20) and the said award had been published in the gazette dated 24.01.2020 (P22). Further, Magistrate's Court proceeding had been instituted on 12.10.2020 (P23).

The Petitioner had filed the instant application before this Court on 26.02.2021 which is more than a year after the publication of the arbitral award in the gazette and nearly four months after the institution of the Magistrate's Court proceedings. Hence, it is the argument of the Respondents that the Petitioner has slept on his rights and is guilty of laches. Considering the above dates, this Court agrees that the Petitioner has failed to invoke the jurisdiction of this Court for more than one year after the award had been published in the gazette.

The Petitioner's response to this was that, there was an intervening health issue that was prevalent with the entire country and the world and therefore, they could not promptly act. However, it was contended that as soon as circumstances provided, they had filed this Writ application. This Court has considered the said explanation. However, I need not give a ruling on the said objection as this Court has held that the original arbitral referral is bad in law due to the Minister not having the power to refer the dispute for compulsory arbitration when the application pertaining to the same dispute is before the Labour Tribunal.

In view of the above decision, where I have held that the arbitral referral is bad in law, I do not consider it is necessary to deal with all the contentions raised by the learned Counsel for the Petitioner and the Respondents.

Conclusion

I have considered all the material tendered to this Court and the submissions made by both parties. For the above stated reasons, in my view, the Petitioner has succeeded in this Writ application. Accordingly, this Court proceeds to issue a Writ of Certiorari quashing the arbitral award dated 03.12.2019 marked as P20 as prayed for in prayer (c), and also proceeds to issue a Writ of Certiorari quashing the publication of the arbitral award (*vide* the gazette extraordinary no. 2159/45 dated 24.01.2020) as prayed for in prayer (d). Both parties are to bear their own costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal